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SHENANDOAH LAND & ANTHRACITE COAL COMPANY v. HISE.—

Decided at Richmond, November 21, 1895.—*Cardwell, J.*

1. ASSIGNMENT OF MINERALS "TO FARM"—*Mining lease.* A written agreement under seal by which the owner of lands assigns to another "to farm," for a term of years, all his right, title and interest to all the minerals on his land, founded upon no consideration except that the assignee shall pay to the owner of the land one-fourth part of all the profits which may be obtained from any mineral which may be mined on said land, is a "mining lease," and confers on the assignee only the usual mining rights, which it is his duty to exercise in a reasonable time and in a manner calculated to benefit the lessor as well as himself. And if the lessee fails to discharge this duty a court of equity will set aside and annul the agreement.

EFFINGER'S EX'X v. KENNEY, TRUSTEE.—Decided at Richmond,
November 21, 1895.—*Buchanan, J.*

1. CHANCERY PRACTICE—*Reversal of decree fixing amount of debt and directing sale of land—payments on judgment reversed.* Where a decree which fixes the amount of a debt and directs the sale of real estate unless the debt is paid, is reversed on appeal because the amount of the debt is not properly ascertained, this of necessity sets aside the sale, if one has been made, and reverses the decree directing the sale. The trial court should then proceed to ascertain the amount of the debt in accordance with the mandate of the appellate court, if any, and if none, should proceed *de novo*, allowing all proper credits. If payments have been made on a judgment which has been reversed, they should be credited on the debt on which the judgment was rendered.

2. CHANCERY PRACTICE—*Purchaser at judicial sale—decree reversed on appeal—rights and liabilities of purchaser.* A purchaser at a judicial sale, who has purchased in good faith, under a decree of a court of competent jurisdiction, which decree was afterwards reversed, is entitled to be repaid his purchase-money, as far as it has been paid, and to be reimbursed for permanent improvements made upon the property which have added to its value, and must account for rents and profits. Commercial fertilizers cannot be regarded as permanent improvements, and clay used for making bricks should not be charged as minerals. The clay should be charged as damage done to the land by digging and removing it therefrom.

3. CHANCERY PRACTICE—*Claiming under and against a trust.* Parties who claim under a trust and come in and prove their debts and received a part of the trust fund, will not be allowed afterwards to repudiate their action and claim against the trust.

STULL v. RICH PATCH IRON COMPANY.—Decided at Richmond,
November 21, 1895.—*Buchanan, J.*

1. EJECTMENT—*Entry on part, claiming the whole—adverse possession.* Where one, under color of title, enters into possession of a portion of smaller tract of land claiming the whole, which smaller tract is part of a larger tract of no part of which the owner is in the actual possession, his possession is co-extensive with his boundaries, and he thus becomes in the actual adverse possession of the whole

boundary claimed by him, and the statute of limitations then commences to run in his favor as to the whole tract covered by his title papers, even though the title conveyed by the writing under which he claims is worthless. And the subsequent entry by the owner of the larger tract into possession of a part thereof, outside the boundaries of the smaller tract, claiming the whole, before the necessary time has elapsed to make good the title of the smaller tract, under the statute of limitations, does not operate to oust or dispossess the claimant of the smaller tract.

TOWN OF CLIFTON FORGE V. THE ALLEGHANY BANK AND OTHERS.—

Decided at Richmond, November 21, 1895.—*Harrison, J.*:

1. MUNICIPAL BONDS—*Purchasers for value—application of purchase money to discharge of ultra vires contract.* The *bona fide* purchaser for value of negotiable coupon bonds of a municipal corporation is in no sense bound to see to the application of the purchase money, nor to determine whether the proceeds were or were not to be used in the discharge of an *ultra vires* contract of the municipality. If the municipality had power to issue the bonds, and that power has been properly exercised, and the bonds are regular on their face, it is immaterial to what use the proceeds of the bonds are applied so long as the purchaser has acted in good faith.

THE TOWN OF CLIFTON FORGE V. THE BRUSH ELECTRIC COMPANY
AND OTHERS.—Decided at Richmond, November 21, 1895.—*Harrison, J.*:

1. MUNICIPAL COUPON BONDS—*Holder for value without notice—defence of ultra vires.* Although negotiable coupon bonds of a municipal corporation, or the proceeds of such bonds, may have been used to discharge an *ultra vires* contract of the corporation, this defence cannot be set up by the corporation against a *bona fide* holder for value of such bonds, acquired before maturity without notice of such defence. If the corporation had power to execute the bonds, and the power has been executed in a lawful manner, and the bonds are free from condition, and exhibit all the requisite features of negotiability, the *bona fide* purchaser of such bonds, for value, acquires good title.

BOARD OF SUPERVISORS OF BEDFORD COUNTY V. BEDFORD HIGH
SCHOOL.—Decided at Richmond, November 21, 1895.—*Keith, P.*:

1. BEDFORD HIGH SCHOOL—*Act of incorporation constitutional.* The Act of Assembly, approved March 3, 1894, entitled "An Act to Provide for the Establishment of a High School for Bedford County," establishes one of the class of "higher grades of school" referred to in Sec. 9, Art. VIII, of the Constitution, and is not in conflict with the provision of Sec. 8, Art. VIII, of the Constitution, and is not unconstitutional.

2. COVENANT RESTRICTING USE OF LAND—*Case at bar.* A deed conveying real estate to an incorporated school contains a covenant "that said land and buildings shall be used for the purposes of said school, and for no other purpose." This covenant does not create a base or qualified fee, but it does restrict the use of the land to a particular purpose which is binding on all those taking title to the property with notice thereof, and imposes a servitude on the land which a court of equity will, in a proper case, enforce.